



# Enforcement Division

## Complaint

## Overview

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## I. Introduction to TREC Complaints

This complaint overview manual provides information about the Texas Real Estate Commission's complaint process, which is also outlined in Commission Rules.<sup>1</sup>

### A. Who does TREC Regulate?

TREC regulates these real estate professionals in Texas:

- Real Estate Sales Agents and Brokers
- Real Estate Inspectors
- Easement and Right-of-Way Agents
- Real Estate Education Providers
- Timeshare Plans

These real estate professionals are required to have a license, approval, or certificate issued by the Commission in order to engage in the real estate profession. A person may file a complaint with TREC against any of these real estate professionals if the person believes the professional violated statutes or Rules enforced by the Commission.

### B. Basic Complaint Requirements

When the Commission receives a signed, written complaint along with evidence that provide reasonable cause for an investigation, the Commission is required to investigate the matter.<sup>2</sup> The Commission cannot investigate anonymous complaints.<sup>3</sup>

The time limit for complaints is four years from the date of the incident.<sup>4</sup> In other words, the Commission cannot investigate complaints that are more than four years old. Additionally, the Commission can only investigate complaints related to issues within its jurisdiction.

### C. How are Complaints Filed?

Complaints must be submitted in writing. The Commission provides a [complaint form](#) but use of the form is not required. Signed complaints and supporting documents can be delivered to the Commission by fax, email, mail, or hand delivery.

- Fax number: 512-936-3809
- Email address: [enforcement@trec.texas.gov](mailto:enforcement@trec.texas.gov)

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<sup>1</sup> 22 Tex. Admin. Code §§ 535.141-535.142.

<sup>2</sup> Section 1101.204(b), Texas Occupations Code.

<sup>3</sup> Section 1101.204(f), Texas Occupations Code.

<sup>4</sup> Section 1101.204(c), Texas Occupations Code.

- Mailing address:  
Texas Real Estate Commission  
PO Box 12188  
Austin, TX 78711-2188
- Physical address for hand delivery:  
Texas Real Estate Commission  
Stephen F. Austin Building  
1700 N. Congress Ave., Suite 400  
Austin, TX 78701

In addition to receiving complaints, TREC staff may file a complaint and conduct an investigation as necessary to enforce the statutes found in Chapters 1101 and 1102, Texas Occupations Code and Commission Rules.<sup>5</sup>

## II. Initial Processing of Complaints

Complaints are first reviewed for basic requirements.

### A. Is the Complaint Signed?

Complaints that do not include a signature are immediately returned to the sender with a request for signature. If the complaint is signed, it is processed and the sender receives an email acknowledging the complaint has been received and a case number. A person who files a complaint is a “complainant.”

In the same email, the complainant is informed they will receive a separate update about their complaint within 30 days.<sup>6</sup> The update may include:

- Notice the complaint is outside TREC’s jurisdiction.
- Request for additional information.
- Notice the case has been opened for investigation.

### B. Complaint Matters Outside TREC’s Jurisdiction

Complaints regarding matters outside the jurisdiction of the Commission are closed without an investigation.<sup>7</sup> For example, these types of complaints may include a commission dispute between a sales agent and their broker, a tenant complaint against a landlord who does not hold a real estate license, and any private dispute between the parties to a contract.

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<sup>5</sup> Section 1101.204(a), Texas Occupations Code.

<sup>6</sup> 22 Tex. Admin. Code §535.142(c).

<sup>7</sup> 22 Tex. Admin. Code §535.142(d).

## C. Complaints Requiring Additional Information

If it is determined that a complaint requires additional information in order for the complaint to meet the “reasonable cause for an investigation” standard mandated by The Real Estate License Act, Commission staff may request that the complainant provide such additional information. The Commission’s request informs the complainant that the additional information must be received within 14 days. If the additional information is not received within 14 days, no further action is taken.<sup>8</sup>

## III. Complaint Opening

If a complaint is signed and provides reasonable cause for an investigation, the complaint is opened for investigation.

### A. Who Must Respond to a Complaint?

A significant part of opening the complaint is identifying the parties that must respond to the complaint. Parties who are the subject of a TREC complaint are called “respondents.” Each party determined to be a respondent to the complaint receives a copy of the complaint filed against them.<sup>9</sup>

#### 1. Named Parties

A party named in a complaint is included as a respondent, assuming the complaint contains reasonable cause the party was involved in the transaction.

#### 2. Sponsoring Brokers

A complaint against a real estate sales agent is also a complaint against the broker who sponsored the sales agent at the time of the incident, even if the sponsoring broker is not specifically named as a party in the complaint. The Commission opens the complaint against the sponsoring broker “for the limited purposes of determining the broker’s involvement in any alleged violation and whether the broker fulfilled his or her professional responsibilities provided the complaint concerns the conduct of the sales agent as an agent for the broker.”<sup>10</sup>

If the complaint involves the sales agent’s actions only as a principal in a transaction, the Commission will not open the complaint against the sales agent’s sponsoring broker.

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<sup>8</sup> 22 Tex. Admin. Code §535.142(f)(1).

<sup>9</sup> § 1101.204(d), Texas Occupations Code.

<sup>10</sup> 22 Tex. Admin. Code § 535.141(a).

### 3. Designated Brokers

Similarly, a complaint against a business entity broker is also a complaint against the designated broker for the business entity, even if the designated broker is not specifically named as a party in the complaint. The Commission opens the complaint against the designated broker “for the limited purposes of determining the designated broker's involvement in any alleged violation and whether the designated broker fulfilled his or her professional responsibilities.”<sup>11</sup>

If the complaint involves a sales agent sponsored by a business entity, the Commission will open the complaint against the business entity broker who sponsored the sales agent at the time of the incident and broker who acted as the designated broker for the business entity at the time of the incident. If the complaint involves the sales agent’s actions only as a principal in a transaction, the Commission will not open the complaint against the sales agent’s sponsoring business entity broker or its designated broker.

#### B. Prioritization of Complaints

The Commission is required to prioritize the investigation of complaints using a risk-based approach based on the following:<sup>12</sup>

- degree of potential harm to a consumer;
- potential for immediate harm to a consumer;
- overall severity of the allegations in the complaint;
- number of license holders potentially involved in the complaint;
- previous complaint history of the license holder; and
- number of potential violations in the complaint.

Currently, Enforcement staff use a prioritization system that has three levels.<sup>13</sup> Each level is associated with a dollar amount of loss and specific statutes and rules, among other factors.

Level 1	<ul style="list-style-type: none"><li>• Fraud or misrepresentation that involves loss of &gt;\$10K</li><li>• Personal safety issues</li><li>• Unlicensed activity</li><li>• Mortgage Fraud</li></ul>
Level 2	<ul style="list-style-type: none"><li>• Fraud or misrepresentation that involves loss of money or property &lt;\$10,000</li><li>• Negligence</li><li>• Allegations involving education providers.</li><li>• Violations of Sections 1102.301-1101.303, 1101.305, Texas Occupations Code.</li></ul>

<sup>11</sup> 22 Tex. Admin. Code § 535.141(b).

<sup>12</sup> Section 1101.204(h), Texas Occupations Code.

<sup>13</sup> 22 Tex. Admin. Code § 535.141(c).

	<ul style="list-style-type: none"> <li>• Violations of Standards of Practice found in 22 Tex. Admin. Code §§ 535.227-535.231.</li> </ul>
Level 3	<ul style="list-style-type: none"> <li>• Technical violations</li> <li>• Chapter 1102 complaints other than those listed in Level 2 above.</li> </ul>

## IV. Complaint Investigation

The Enforcement Division performs two types of investigations: headquarters investigations and field investigations. The type of investigation performed is based on the complexity of the complaint and the nature of the allegations made in the complaint.

Respondents who hold licenses, certificates, and approvals issued by the Commission are required to respond to complaints within a specific amount of time.

- Real Estate Sales Agents and Brokers: 14 days.<sup>14</sup>
- Real Estate Inspectors: 14 days.<sup>15</sup>
- Easement and Right-of-Way Agents: 14 days.<sup>16</sup>
- Real Estate Education Providers: 15 days.<sup>17</sup>
- Timeshare Plans: 14 days.<sup>18</sup>

### A. Headquarters Investigations

Headquarters investigations are conducted by legal assistants. After the complaint opening is approved by an attorney, a legal assistant sends each respondent a copy of the complaint along with a letter requesting a response. Once all responses are received, or the time to respond to the complaint has elapsed, the complaint is assigned to an attorney for review.

### B. Field Investigations

Field investigations are conducted by investigators. After the complaint opening is approved by an attorney, a legal assistant sends each respondent a copy of the complaint along with a letter stating they will be contacted by an investigator. The investigator contacts the complainant, respondents, and certain witnesses that may have knowledge of the incident.<sup>19</sup> The

<sup>14</sup> § 1101.652(a)(4), Texas Occupations Code (see also 22 Tex. Admin. Code § 535.142(f)(3)).

<sup>15</sup> § 1101.652(a)(4), Texas Occupations Code.

<sup>16</sup> 22 Tex. Admin. Code § 535.402(a)(3).

<sup>17</sup> 22 Tex. Admin. Code § 535.67(d)(1)(D).

<sup>18</sup> 22 Tex. Admin. Code § 543.5(g).

<sup>19</sup> 22 Tex. Admin. Code § 535.142(h).

investigator compiles the witness statements and documents into an investigative report. Then, the complaint is assigned to an attorney for review.

### C. Are Investigations Limited to Allegations Made in the Complaint?

No, TREC investigations are not limited to the allegations made in the complaint. If information obtained during an investigation reveals reasonable cause that the respondents may have committed other violations, no additional authorization is required to investigate and take action based on that information.<sup>20</sup>

## V. Complaint Review and Disposition

An attorney reviews each investigated complaint and determines whether a violation occurred. If the investigation reveals a violation occurred, the attorney makes a recommendation on the appropriate remedy for the violation, which is approved by the division director.

### A. No Disciplinary Action

An attorney may determine the investigation shows the incident is outside the jurisdiction of the Commission, that no violation occurred, or that the investigation did not provide sufficient evidence to prove a violation occurred. These determinations are sent to the complainant with a copy to the respondent.

### B. Informal Disciplinary Action

If an attorney determines there are areas of concern that concerning the incident and investigation, the attorney writes an advisory letter to each respondent, which is similar to a warning.<sup>21</sup> The Commission saves advisory letters in the license holder's master file for 10 years. Advisory letters can be used as evidence if a similar situation arises in the future. The complainant receives a copy of the advisory letter.

### C. Formal Disciplinary Action

If the investigation reveals evidence that proves a violation occurred, an attorney may pursue formal disciplinary action. For real estate sales agents and brokers, formal disciplinary action includes:

- reprimand of a license;
- suspension of a license; and

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<sup>20</sup> 22 Tex. Admin. Code § 535.141(d).

<sup>21</sup> 22 Tex. Admin. Code §535.142(j).



- revocation of a license.

When considering suspension of a license, Enforcement staff can decide to fully suspend the license or probate the suspension.<sup>22</sup> Similarly, revocation of a license can be probated.

Enforcement staff may also impose an administrative penalty against a license holder in addition to a reprimand, suspension, or revocation of a license.<sup>23</sup> When deciding the amount of an administrative penalty, several factors must be considered:<sup>24</sup>

- the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts;
- the history of previous violations;
- the amount necessary to deter a future violation;
- efforts to correct the violation; and
- any other matter that justice may require.

The Commission adopted a Rule, referred to as the “penalty matrix,” which takes into consideration these factors and assigns a penalty range to various violations of The Real Estate License Act and Commission Rules.<sup>25</sup> The penalty matrix contains three ranges for penalties:

- \$100 - \$1,500
- \$500 - \$3,000
- \$1,000 - \$5,000

The penalty matrix ensures the amount of the penalty imposed is appropriate to the violation.<sup>26</sup>

## 1. What is the Process for Formal Discipline?

Formal disciplinary action can take the form of an Agreed Order or a Notice of Alleged Violation, which is usually sent with an Original Petition that contains the facts surrounding the incident, the violations that occurred, and the discipline requested.

### a) Agreed Orders

An Agreed Order is entered when the respondent admits to violations and discipline. In such a situation, the case may be settled by an Agreed Order.<sup>27</sup> Generally, the Enforcement Division will only offer an Agreed Order when there has been some understanding of the wrongdoing or other mitigation, such as an effort to correct the violation that was committed.

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<sup>22</sup> § 1101.656(b), Texas Occupations Code.

<sup>23</sup> § 1101.701, Texas Occupations Code, 22 Tex. Admin. Code § 535.191(a).

<sup>24</sup> § 1101.702(b), Texas Occupations Code.

<sup>25</sup> 22 Tex. Admin. Code § 535.191(c)-(e).

<sup>26</sup> § 1101.702(c), Texas Occupations Code.

<sup>27</sup> 22 Tex. Admin. Code §535.142(l).

## b) Notice of Alleged Violation (NOAV)

If a respondent does not agree regarding violations and possible discipline regarding a case, or if the violations revealed are egregious, then an attorney will send a Notice of Alleged Violation (NOAV).<sup>28</sup> An NOAV is also used when a license holder fail to timely respond to a complaint and in some cases of unlicensed real estate brokerage activity.

A respondent who receives an NOAV has 30 days to either accept the discipline recommended or request a hearing on the matter.<sup>29</sup> If the respondent does neither within 30 days, a default Final Order may be entered against them.<sup>30</sup> If the respondent accepts the discipline recommended in the NOAV, an agreed Final Order is entered.

## c) Hearings

If a respondent timely requests a hearing, the Enforcement Division will request that the State Office of Administrative Hearings (SOAH) schedule the case on their docket.<sup>31</sup> Hearings are typically scheduled 30-90 days from the date of the hearing request. Once the hearing is scheduled, Enforcement staff must send a Notice of Administrative Hearing to the respondent.

After the hearing is held, a SOAH administrative law judge (ALJ) has 60 days to issue a Proposal for Decision (PFD). The PFD outlines the evidence presented in the case, the ALJ's analysis, whether the respondent committed a violation of the statutes or Rules, and a recommendation for the appropriate discipline, if any.

After the PFD has been issued, the parties have a limited amount of time in which they can file exceptions to the PFD. Exceptions are filed when a party believes the PFD contains mistakes or errors. The opposing party can file a reply. The ALJ will issue a decision on any changes to the PFD based on the exceptions and any reply.<sup>32</sup>

The case then goes in front of the TREC Commissioners who make a final decision in the case. This decision is adopted in a Final Order.<sup>33</sup> After the Commission issues a Final Order in a case, a respondent can file a request for rehearing.<sup>34</sup> If the rehearing is granted, the case will go back in front of the TREC Commissioners for reconsideration. If the rehearing is denied, the respondent can file an appeal of the Final Order in district court.<sup>35</sup>

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<sup>28</sup> § 1101.703, Texas Occupations Code, 22 Tex. Admin. Code § 533.3(c).

<sup>29</sup> § 1101.704, Texas Occupations Code, 22 Tex. Admin. Code § 533.3(d).

<sup>30</sup> 22 Tex. Admin. Code § 533.4(a).

<sup>31</sup> § 1101.705(a), Texas Occupations Code, 22 Tex. Admin. Code § 533.3(e).

<sup>32</sup> 22 Tex. Admin. Code § 533.6.

<sup>33</sup> § 1101.705, Texas Occupations Code, 22 Tex. Admin. Code § 533.7(a).

<sup>34</sup> § 1101.706, Texas Occupations Code, 22 Tex. Admin. Code § 533.8(a)-(e).

<sup>35</sup> § 1101.707, Texas Occupations Code, 22 Tex. Admin. Code § 533.8(f).